TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1899~~. 1902.

No. 40 Original.

THE STATE OF TENNESSEE, COMPLAINANT,

vs.

THE STATE OF VIRGINIA.

BILL IN EQUITY.

FILED APRIL 16, 1900.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 11, Original.

THE STATE OF TENNESSEE, COMPLAINANT,

vs.

THE STATE OF VIRGINIA.

BILL IN EQUITY.

INDEX.

	Original.	Print.
Caption	1	1
Motion for leave to file bill of complaint	2	1
Order granting leave to file bill and answer	3	2
Bill of complaint	5	2
Appearance for complainant	11	5
Answer	13	5
Exhibit 1—Opinion in Miller *vs.* Wills (omitted in printing per stipulation)	17	—
2—Record in Miller *vs.* Wills (omitted in printing per stipulation)	17	—
Appearance for respondent	19	8
Order granting leave to file replication, stipulation, and proposed decree	20	8
Replication to answer	22	8
Stipulation as to decree, &c.	25	9
Form of proposed decree	28	10
Order submitting cause	31	11

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 19, 1900.

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1 Supreme Court of the United States, October Term, 1899.

At the Capitol of the United States, in the city of Washington and District of Columbia, being the present seat of the National Government of the United States, on the second Monday of October (being the ninth day of the same month), in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-fourth, the Supreme Court of the United States met agreeably to law.

And afterwards, to wit, on the 16th day of April, A. D. 1900, a motion for leave to file a bill of complaint was filed in the words and figures following, viz:

2 In the Supreme Court of the United States.

STATE OF TENNESSEE
vs.
STATE OF VIRGINIA. } Petition.

To the honorable Chief Justice and associate justices of the Supreme Court of the United States:

The State of Tennessee, by G. W. Pickle, her attorney general, prays for leave to file the accompanying bill, brought by Tennessee against Virginia, and to prosecute an original suit in equity thereon.

And in view of the fact that the defendant, as shown by the accompanying papers, waives process and files answer substantially admitting all averments of the bill and joins in the prayer for relief, petitioner will pray the court to advance this cause for immediate hearing and decree.

Petitioner avers that the matters involved do not admit of delay.

G. W. PICKLE,
Att'y General of Tennessee.

The State of Virginia, by A. J. Montague, her attorney general, joins in the above application for advancement and immediate hearing of this cause.

A. J. MONTAGUE,
Att'y General of Virginia.

Endorsed: Supreme Court U. S., October term, 1899. Term No., 11, original. The State of Tennessee, complainant, *vs.* The State of Virginia. Motion for leave to file bill of complaint. Filed Apr. 16, 1900.

3 And on the same day, to wit, on the 16th day of April, A. D. 1900, the following entry appears of record, viz:

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THE STATE OF TENNESSEE, Complainant,
vs.
THE STATE OF VIRGINIA.

On motion of Mr. G. W. Pickle, of counsel for the complainant, leave is hereby granted to file a bill of complaint herein, and, on motion of Mr. A. J. Montague, of counsel for the defendant, leave is hereby granted to file the answer of the defendant to said bill.

4 And on the same day, to wit, on the 16th day of April, A. D. 1900, the bill of complaint was filed in the words and figures following, viz:

5 In the Supreme Court of the United States.

THE STATE OF TENNESSEE, Complainant,
vs.
THE STATE OF VIRGINIA, Defendant. } Original, No. —.

Bill in Chancery.

To the honorable Chief Justice and associate justices of the Supreme Court of the United States:

Complainant respectfully shows unto your honors that the complainant and the defendant are sister States of the Federal Union. They adjoin each other, the southern boundary of Virginia coinciding with the northern boundary of Tennessee for the distance of one hundred and thirteen miles from the northeastern corner of Tennessee, on the summit of White Top mountain, westward to Cumberland Gap.

Prior to the year 1800 there had been much doubt and controversy as to the true location of this boundary line.

During the years 1801–1803 the two States took decisive action in regard to this boundary dispute, and, by the most solemn proceedings, agreed upon a compromise line and had it run and marked. There was no revival of the dispute for more than half a century. In 1858–'9 the two States appointed a joint commission to "again run and mark said line." The report of this commission was unanimous. In 1889 the controversy over this boundary line culminated in a suit in equity brought in this court by the State of Virginia against the State of Tennessee.

6 In that suit Virginia sought to have the compromise line of 1801–1803 annulled and set aside upon the ground that it had been established by a compact between the States, which was illegal and invalid for want of consent of Congress, and to have the boundary line declared and established on the parallel of 36° 30′ north latitude, a considerable distance south of the compromise line.

The bill incidentally sought a rerunning and marking of the boundary.

Tennessee resisted the claims made by Virginia, and the bill was

dismissed. The opinion of this court, which elaborately reviews the history of this boundary line, is reported in 148 U. S., pp. 503–528.

The result of that suit was that a decree was passed and entered "declaring and adjudging that the boundary line established between the States of Virginia and Tennessee by the compact of 1803 is the real, certain, and true boundary line between the said States, and that the prayer of the complainant to have the said compact set aside and annul-ed and to have a new boundary line run between them on the parallel of 36° 30′ north latitude should be and is denied at the cost of the complainant."

(148 U. S., p. 528.)

The line thus declared and established is popularly known as the diamond line, having been marked, as shown by the report of the commission, "with five chops in the form of a diamond."

(148 U. S., p. 513.)

While the court denied any relief under the bill in said cause, this statement occurs in the opinion, on p. 528, to wit: "On a
7 proper application based upon a showing that any marks for the identification of that line (of 1803) have been obliterated or have become indistinct, an order may be made at any time during the present term for the restoration of such marks without any change of line."

In 1895 an unsuccessful attempt was made by Virginia, to which Tennessee made no objection, to obtain an order in the original cause to have said line of 1803 rerun and remarked. This application was dismissed because the court's power over the original cause had ceased with the expiration of the October term, 1893.

(158 U. S., pp. 268–271.)

Complainant avers that the rerunning and remarking of said boundary line has became essential upon the highest considerations of a public character.

The line has become indistinct and difficult of identification in many places, especially at and near Cumberland Gap, Bristol-Goodson, Denton's valley, Pond mountain, and White Top mountain. Many of the marks and monuments of boundary have become obscure or been lost as the result of the lapse of a century. Others have been destroyed accidentally by the opening of farms and building of towns along the line. Still others have been intentionally and fraudentally destroyed and effaced by interested parties seeking to defeat or evade a proper administration of the law.

Complainant avers that as a result of this obscurity of said boundary line there have been much embar-assment and frequent miscarriage in the administration of the law, criminal and
8 civil, in the two States; vexations, harassing and angry litigation between citizens of the two States, sometimes threatening public peace and order and endangering human life; discordant and conflicting decisions by courts and juries in the two States, and

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uncertainty and conflict of jurisdiction and sovereignty of the States and of the rights of citizens along said line.

It is not improbable that each State has at some point or points along said line assumed jurisdiction beyond its lawful limits.

It is doubtless true that the citizens on both sides of said line, whose rights are bounded by the line, are making mistaken claims.

Complainant is advised that this court is authorized to afford relief by original suit in equity in a case of this character.

Complainant is advised and avers that there is no other effective remedy than an appeal to this court.

Experience has proven that agreements and compromises will not put the matter at rest.

Premises considered, complainant prays that The State of Virginia be made a party defendant hereto, and that subpœna, with copy of bill, issue (unless appearance shall be voluntarily entered), to be served upon the proper officers of the State, and that said defendant be required to answer this bill; that upon the hearing a decree be entered ordering a rerunning and remarking of the boundary line between said States as fixed in 1803 and declared by this court in the case of Virginia *vs.* Tennessee, reported in 148 U. S., 503–528; that three commissioners, to be agreed upon
9 by the parties or designated by the court, be appointed to retrace and remark said line, and to place at each end thereof and along its course all necessary marks and monuments for its identification and preservation; that they be authorized to use and consider the printed record in case of Virginia *vs.* Tennessee in running said line, and to take such other evidence as they may deem necessary for the proper discharge of their duties; that they be required to report their action, with their reasons therefor, and all evidence taken and considered by them for the action of this court, and that on final hearing decree be rendered confirming said report, and that proper writs issue to put and protect each State in possession of its lawful territory. Complainant prays general relief.

STATE OF TENNESSEE,
By G. W. PICKLE, *Att'y Gen'l.*

The State of Virginia, by A. J. Montague, her attorney general, comes and waives process and copy of bill in this cause and enters appearance and files answer.

A. J. MONTAGUE,
Attorney General.

Endorsed: Original bill, No. —. The State of Tennessee *vs.* The State of Virginia. G. W. Pickle, att'y general for Tennessee.

Supreme Court U. S., October term, 1899. Term No., 11, original. The State of Tennessee, complainant, *vs.* The State of Virginia. Bill in chancery. Filed April 16, 1900.

10 And on the same day, to wit, on the 16th day of April, A. D. 1900, an appearance for the complainant was filed in the words and figures following, viz:

11 Supreme Court of the United States, October Term, 1899.

STATE OF TENNESSEE, Complainant,
vs.
THE STATE OF VIRGINIA. } No. 11, Orig.

The clerk will enter my appearance as counsel for the complainant.

G. W. PICKLE,
Knoxville, Tenn.

Endorsed: Supreme Court U. S., October term, 1899. Term No., 11, orig'l. Appearance for compl't. Filed Apr. 16, 1900.

12 And on the same day, to wit, on the 16th day of April, A. D. 1900, the answer of the defendant was filed in the words and figures following, to wit:

13 In the Supreme Court of the United States.

STATE OF TENNESSEE, Complainant,
v.
STATE OF VIRGINIA.

Answer in Equity.

The answer of The Commonwealth of Virginia, respondent, to a bill of complaint exhibited against her in this honorable court by the State of Tennessee.

This respondent, now and hereafter saving and reserving to herself all benefit and advantage of exception which can or may be had or taken to the errors, uncertainties, and insufficiencies in the said bill contained, for answer thereto, or to so much thereof as she is advised it is material or necessary for her to answer, answers and says:

1. That the territories of complainant and respondent join, as alleged in the bill, and that controversies respecting the boundary thereof arose from time to time prior to the years 1801–1803, when the same were determined by the delimitation known as the "compromise line of 1803" (Virginia *v.* Tennessee, 148 U. S., 503).

2. That on January 13, 1800, the General Assembly of Virginia authorized the appointment of commissioners to meet a similar agency from the State of Tennessee for the purpose of settling and adjusting "all differences concerning the said boundary line;" that on November 13, 1801, the General Assembly of Tennessee authorized the appointment of commissioners to act in conjunction

14 with those of Virginia, and the joint action of these commissioners was reported to their respective States on December 8, 1802, and was confirmed by Virginia January 22nd and by Tennessee November 3rd, respectively, 1803, all of which constituted the aforesaid "compromise line of 1803" (Virginia *v.* Tennessee, *supra*, 510–515).

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3. That this respondent deems it unnecessary to answer the allegation of the bill as to the recurring difference concerning said boundary line and the attempt to settle the same by the joint commission of 1856–1859, save to observe that this respondent promptly and wholly repudiated the action of said commission, as appears by the act of her General Assembly of March 9, 1860 (*idem*, Record, 85); that she in nowise considers herself bound or affected by the action of said commission, and she denies that said commission found, relocated, or retraced the said "compromise line of 1803."

4. It is true that respondent endeavored in the year 1889 to secure from this honourable court a proper authorization for the establishment of the boundary line between the said States upon the parallel of thirty-six degrees (36°) thirty minutes (30′) north latitude, as she then believed the said parallel of latitude to be the true and accurate line of her southern boundary as guaranteed to her by royal charters; and it is true that this honourable court denied the prayer of this respondent and declared the true boundary to be the said "compromise line of 1803."

5. That this honourable court decided, and only decided, that the true boundary line between the States of Tennessee and Virginia was the said "compromise line of 1803," which should be between what is known as Walker's and Henderson's line, "a due west line equally distant from both, beginning on the summit of a mountain generally known by the name of the White Top mountain, where the northeastern corner of Tennessee terminates, to the top of the Cumberland mountain, where the southwestern corner of Virginia terminates" (*idem*, 510, 515, and Record, 79–82).

6. That this respondent does not understand that this honourable court held in Virginia *v.* Tennessee, *supra*, that the commissioners of 1856 relocated or retraced the said "compromise line of 1803," and this respondent respectfully submits that the only question before this honourable court in the said cause was what and not where the line was, and that should any observations appear in the opinion in the aforesaid cause that the said commissioners relocated or retraced the said "compromise line of 1803" the same were not at all necessary to the decision of the issue then before this court and are wholly disregarded in the decree thereof, as will more fully appear from the opinion in Miller *v.* Wills, rendered by the supreme court of this respondent, which, together with the record, is filed herewith as Exhibits "Va. No. 1" and "Va. No. 2" respectively and prayed to be taken as a part hereof.

7. That this respondent fully accepts the adjudication of this court that the true boundary line between the States of Tennessee and Virginia is the said "compromise line of 1803," commonly called the "diamond line," and avers that said compromise line can now be found and located, as plainly appears from the record and opinion in the said case of Miller *v.* Wills, and this respondent believes that the said line should be ascertained, relocated, and remarked by suitable and enduring monuments, and to this end respondent so far concurs in the prayer of complainant as to ask that this honourable court shall appoint three com-

missioners, residents of neither Tennessee nor Virginia, wholly disinterested and of recognized character and scientific capacity, to perform the work of relocating, retracing, and remarking the said "compromise line of 1803."

8. This respondent has no objection to the use by the proposed commission of the printed record in the said cause of Virginia *v.* Tennessee, *supra*, provided that said commission may likewise have the use of the printed record in the said cause of Miller *v.* Wills, *supra*, together with the authority to take such other and further evidence and hear such arguments thereon as they may deem necessary for the proper discharge of their duties.

And, having fully answered the complainant's bill, this respondent prays hence to be dismissed, with her reasonable costs in this behalf expended.

And she will ever pray, and so forth.

COMMONWEALTH OF VIRGINIA,
By J. HOGE TYLER, *Her Governor.*

A. J. MONTAGUE,
Attorney General and ex Officio Counsel for Respondent.

COMMONWEALTH OF VIRGINIA, } *To wit:*
City of Richmond, }

17 This day personally appeared before me, a notary public in and for the State and city aforesaid, his excellency J. Hoge Tyler, governor of the Commonwealth of Virginia, who made oath that the statements made in the foregoing answer, so far as made of his own knowledge, are true, and so far as made upon the knowledge derived from others he believes them to be true.

Given under my hand this 22nd day of March, 1900.

DAVID A. RITCHIE, [SEAL.]
Notary Public.

Endorsed: In the Supreme Court of the United States. State of Tennessee, complainant, *v.* State of Virginia. Original, No. —. Answer. Supreme Court U. S. October term, 1899. Term No., 11, original. The State of Tennessee, complainant, *vs.* The State of Virginia. Answer of the State of Virginia. Filed April 16, 1900.

(NOTE.—Exhibits 1 & 2 to the foregoing answer are omitted in printing, per stipulation of counsel.)

18 And on the same day, to wit, on the 16th day of April, A. D. 1900, an appearance for the defendant was filed in the words and figures following, viz:

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19 The Supreme Court of the United States, October Term, 1899.

STATE OF TENNESSEE, Complainant,
vs.
THE STATE OF VIRGINIA. } No. 11, Orig.

The clerk will enter my appearance as counsel for the respondent.

A. J. MONTAGUE,
Attorney General, Richmond, Va.

Endorsed: Supreme Court U. S., October term, 1899. Term No., 11, orig'l. Appearance for respondent. Filed April 16, 1900.

20 And afterwards, to wit, on the 17th day of April, A. D. 1900, the following entry appears of record, viz:

THE STATE OF TENNESSEE, Complainant,
vs.
THE STATE OF VIRGINIA. } No. 11, Original.

On motion of Mr. G. W. Pickle, of counsel for the complainant, leave is hereby granted to file a replication, stipulation of counsel as to decree, and proposed form of decree in this cause.

21 And on the same day, to wit, on the 17th day of April, A. D. 1900, a replication to the answer was filed in the words and figures following, viz:

22 Supreme Court of the United States, October Term, 1899.

STATE OF TENNESSEE
v.
STATE OF VIRGINIA. } Original Cause, No. 11.

Replication of the State of Tennessee to the Answer of the State of Virginia in the Above Cause.

This repliant, saving usual benefit of exception to said answer, for replication thereto says:

1. It admits the truth of the statements contained in sections 1, 2, and 4 in toto and of so much of section 7 as admits the necessary of granting the relief prayed by the bill in this cause.

2. The averments contained in other sections and parts of said answer, to wit, in sections 3, 5, 6, 7, and 8, are not admitted, but distinctly put at issue.

Section 3 deduces an erroneous conclusion from the decision of this court in Virginia *v.* Tennessee, 148 U. S., 503, but this may be corrected by reference to the opinion.

Sections 5, 6, 7, and 8 likewise erroneously represent the decision in Virginia *v.* Tennessee, 148 U. S., 503, in this, that it is assumed therein that this court decided in said cause that the true line between Tennessee and Virginia was one running due west from

White Top, equidistant between the Walker and Henderson lines, whereas the court in that case distinctly held the actually marked line marked in 1801–1803, known as the diamond line, was the true line and controlled the calls of 36° 30′ for course and recognized offsets and variations as existing in this marked line.

23 These sections of the answer likewise seek to introduce foreign and wholly irrelevant matter through exhibits to said answer of the record and decision of the supreme court of Virginia in the case of Miller *v.* Wills, a case to which neither State was a party, and is objectionable as the declaration of defendant itself in its own favor.

This repliant excepts to said record and decision as wholly irrelevant, being *res inter alios acta*, and denies any force or effect whatever to said records in the decision of this cause, either by the commissioners or by this court.

Having fully replied, this repliant prays to be hence dismissed with costs, &c.

G. W. PICKLE,
Attorney General Tennessee.

Endorsed: Supreme Court U. S., October Term, 1899. No. 11, original. The State of Tennessee, complainant, *vs.* The State of Virginia. Replication of complainant. Filed Apr. 17, 1900.

24 And on the same day, to wit, on the 17th day of April, A. D. 1900, a stipulation of counsel as to decree, &c., was filed in the words and figures following, viz:

25 Supreme Court of the United States, October Term, 1899.

STATE OF TENNESSEE
v.
STATE OF VIRGINIA. } Original Cause, No. 11.

Stipulation.

It is agreed by the parties to this cause as a basis for decree:

1. That the true boundary line between the States of Virginia and Tennessee is the compromise line established by proceedings had by the two States in 1801–1803, which was actually run and located at that time and marked with five chops in the shape of a diamond, and commonly called the diamond line, and running from White Top mountain to Cumberland Gap.

2. That said line has in some parts of it, if not along its entire course, become so far obscured and uncertain as to embarrass the administration of the State and Federal laws and produce confusion as to rights of property and conflict and litigation between the citizens of the two States and to necessitate its ascertainment, rerunning, and remarking.

3. That a decree be passed at once by this court providing for the ascertainment, retracing, and remarking of said line.

4. That the names W. C. Hodgkins, A. H. Buchanan, and J. B.

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Baylor are suggested and agreed upon as satisfactory commissioners to be appointed by this court to ascertain, retrace, and remark said line.

26 5. That the record and opinion of the supreme court of Virginia in the case of Miller *v.* Wills shall not be considered as any part of the pleadings in this cause, and need not therefore be printed.

6. That whatever costs may be required to be borne by the said States shall be equally borne and divided between them.

April 17, 1900.

THE STATE OF TENNESSEE,
By G. W. PICKLE, *Att'y Gen'l.*
THE STATE OF VIRGINIA,
By A. J. MONTAGUE,
Attorney General.

Endorsed: Supreme Court U. S., October term, 1899. No. 11, original. The State of Tennessee, complainant, *vs.* The State of Virginia. Stipulation of counsel as to decree. Filed Apr. 17, 1900.

27 And on the same day, to wit, on the 17th day of April, A. D. 1900, a form of proposed decree was filed in the words and figures following, viz:

28 Supreme Court of the United States, October Term, 1899.

STATE OF TENNESSEE
v.
STATE OF VIRGINIA. } Original Cause, No. 11.

This cause was heard on the — day of April, 1900, before the honorable Supreme Court, at Washington, upon the printed record, including a written stipulation of the parties as to the facts, and the court is of opinion that complainant is entitled to the relief sought.

It is therefore ordered, adjudged, and decreed:

1. That the true boundary line between the States of Virginia and Tennessee is the compromise line established by proceedings had by the two States in 1801–1803, which was then actually run and located and at that time marked with five chops in the shape of a diamond, and commonly known as the diamond line, and running from White Top mountain to Cumberland Gap.

2. That said line has become so far obscured by lapse of time or loss of monuments as to justify and necessitate its re-establishment and remarking under the direction of this court.

3. That W. C. Hodgkins, A. H. Buchanan, and J. B. Baylor be, and they are hereby, appointed commissioners to ascertain, retrace, remark, and re-establish said compromise line.

4. That these commissioners have no authority to establish any new line, but only to ascertain location and remark the said compromise line.

5. That they are authorized to adopt all ordinary and
29 legitimate methods for the ascertainment of the true location of said compromise line, including the taking of evidence, but in the event evidence is taken the parties shall be notified and permitted to be present and examine and cross-examine the witnesses, and the rules of law as to the admissibility and competency of evidence shall be observed.

6th. That all evidence taken by commissioners and all exceptions thereto and action thereon shall be preserved and certified and returned with their report.

7th. When the true location of said compromise line is ascertained they will cause marks and monuments of a durable nature to be placed on and along same in such manner as to perpetuate the line and enable the citizens of each State to find it with reasonable diligence.

8th. That said commissioners will report to the next term of this court.

9th. That the clerk will issue to said commissioners a certified copy of this decree and of the record on which it is based.

10. That before entering upon the discharge of their duties the said commissioners shall be duly sworn to perform faithfully, impartially, without prejudice or bias, the duties herein imposed.

11. That the said commissioners may arrange for their organization, their meetings, and the particular manner as to the performance of their duties.

This decree is asked for.

G. W. PICKLE,
Att'y Gen'l of Tennessee.
A. J. MONTAGUE,
Attorney General of Virginia.

30 Endorsed: Supreme Court U. S., October term, 1899. No. 11, original. The State of Tennessee, complainant, *vs.* The State of Virginia. Form of proposed decree. Filed Apr. 17, 1900.

31 And on the same day, to wit, on the 17th day of April, A. D., 1900, the following entry appears of record, viz:

THE STATE OF TENNESSEE, Complainant,
vs.
THE STATE OF VIRGINIA. } No. 11, Original.

This cause was submitted to the consideration of the court by Mr. G. W. Pickle, of counsel for the complainant, and Mr. A. J. Montague, of counsel for the defendant.

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